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REPORT
101-328

TO IMPROVE THE ABILITY OF THE SECRETARY OF THE INTERIOR TO PROPERLY MANAGE CERTAIN RESOURCES OF THE NATIONAL PARK SYSTEM

JUNE 8 (legislative day, APRIL 18), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 2844]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2844) to improve the ability of the Secretary of the Interior to properly manage certain resources of the National Park System, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. DEFINITIONS.

As used in this Act the term—

(a) "Attorney General" means the Attorney General of the United States;

(b) "damages" includes the following:

(1) Compensation for—

(A)(i) the cost of replacing, restoring, or acquiring the equivalent of a park system resource; and

(ii) the value of any significant loss of use of a park system resource pending its restoration or replacement or the acquisition of an equivalent resource; or

(B) the value of the park system resource in the event the resource cannot be replaced or restored.

(2) The cost of damage assessment under section 3(b);

(c) "response costs" means the costs of actions taken by the Secretary of the Interior to prevent or minimize destruction or loss of or injury to park system resources; or to abate or minimize the imminent risk of such destruction, loss, or injury; or to monitor ongoing effects of incidents causing such destruction, loss, or injury;

(d) "park system resource" means any living or non-living resource that is located within or is a living part of a marine regimen or a Great Lakes aquatic regimen (including an aquatic regimen within Voyageurs National Park) within

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the boundaries of a unit of the National Park System, except for resources owned by a non-Federal entity.

(e) "regimen" means a water column and submerged lands, up to the high-tide or high water line; and

(f) "Secretary" means the Secretary of the Interior.

SEC. 2. LIABILITY.

(a) IN GENERAL.—Subject to subsection (c), any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

(b) LIABILITY IN REM.—Any instrumentality, including but not limited to a vessel, vehicle, aircraft, or other equipment that destroys, causes the loss of, or injures any park system resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury to the same extent as a person is liable under subsection (a).

(c) DEFENSES.—A person is not liable under this section if such person can establish that—

(1) the destruction, loss of, or injury to the park system resource was caused solely by an Act of God or an act of war; or

(2) such person acted with due care, and the destruction, loss of, or injury to the park system resource was caused solely by an act or omission of a third party, other than an employee or agent of such person; or

(3) the destruction, loss, or injury to the park system resource was caused by an activity authorized by Federal or State law.

SEC. 3. ACTIONS.

(a) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon request of the Secretary after a finding by the Secretary—

(1) of damage to a park system resource; or

(2) that absent the undertaking of response costs, damage to a park system resource would have occurred;

may commence a civil action in the United States district court for the appropriate district against any person who may be liable under section 2 for response costs and damages. The Secretary shall submit a request for such an action to the Attorney General whenever a person may be liable or an instrumentality may be liable in rem for such costs and damages as provided in section 2.

(b) RESPONSE ACTIONS AND ASSESSMENT OF DAMAGES.—

(1) The Secretary shall undertake all necessary actions to prevent or minimize the destruction, loss of, or injury to park system resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) The Secretary shall assess and monitor damages to park system resources.

SEC. 4. USE OF RECOVERED AMOUNTS.

Response costs and damages recovered by the Secretary under the provisions of this Act–or amounts recovered by the Federal Government under any Federal, State, or local law or regulation or otherwise as a result of damage to any living or non-living resource located within a unit of the National Park System, except for damage to resources owned by a non-Federal entity, shall be available to the Secretary and without further Congressional action may be used only as follows:

(a) RESPONSE COSTS AND DAMAGE ASSESSMENTS.—To reimburse response costs and damage assessments by the Secretary or other Federal agencies as the Secretary deems appropriate; and

(b) RESTORATION AND REPLACEMENT.—To restore, replace, or acquire the equivalent of resources which were the subject of the action and to monitor and study such resources: *Provided,* That no such funds may be used to acquire any lands or waters or interests therein or rights thereto unless such acquisition is specifically approved in advance in Appropriations Acts and any such acquisition shall be subject to any limitations contained in the organic legislation for such park unit.

(c) EXCESS FUNDS.—Any amounts remaining after expenditures pursuant to subsections (a) and (b) shall be deposited into the General Fund of the United States Treasury.

(d) REPORT TO CONGRESS.—The Secretary shall report annually to the Committee on Appropriations and the Committee on Energy and Natural Resources of the United States Senate and the Committee on Appropriations and the Committee on Interior and Insular Affairs of the United States House of Representatives on funds expended pursuant to this Act. The report shall contain a detailed analysis and accounting of all funds recovered and expended, including,

but not limited to, donations received pursuant to section 5, projects undertaken, and monies returned to the Treasury.

SEC. 5. DONATIONS.

The Secretary may accept donations of money or services for expenditure or employment to meet expected, immediate, or ongoing response costs. Such donations may be expended or employed at any time after their acceptance, without further Congressional action.

PURPOSE OF THE MEASURE

The purposes of H.R. 2844, as ordered reported, are to authorize the Secretary of the Interior, acting through the Attorney General, to initiate legal action against individuals who destroy or injure living or non-living marine or Great Lakes aquatic resources within units of the National Park System, and to allow the Secretary to use funds recovered as a result of damage to living or non-living resources within any unit of the National Park System for the restoration and replacement of such resources.

BACKGROUND AND NEED

In December 1986, a freighter ran aground on a coral reef in Biscayne National Park in Florida, damaging over 6,000 square feet of coral. The company owning the freighter subsequently settled with the Department of Justice for $40,000. That money was desposited as miscellaneous funds in the treasury of the United States. Because funds were not otherwise available to the National Park Service to quickly repair the damage, a large amount of live coral damaged in the accident was lost.

In October 1989, another freighter ran aground on a coral reef at nearby Fort Jefferson National Monument causing considerable damage. The United States is currently in the process of assessing and attempting to collect damages. Under current law, any money recovered as a result of damages to park resources would also be deposited into the Treasury and would not be available to the park for restoration purposes.

In addition to these two examples, there have been numerous other, more common cases of damage to park system marine or aquatic resources, such as grounded or sunk boats within a park, or contaminants such as oil or fuel leaking into, and damaging or destroying park resources.

Although Biscayne National Park, with almost 170,000 aquatic acres, has more marine resources than all but one other unit of the National Park System, there are 28 other units containing marine or aquatic resources which also face significant threats. These include all National Seashores and Lakeshores, and certain National Parks in Alaska, Washington, California, Florida, Michigan, Minnesota, Maine and the Virgin Islands.

In 1988 Congress passed the National Marine Sanctuaries Program Amendments (Public Law 100-627). Section 204 of that Act establishes a mechanism authorizing the Secretary of Commerce, acting through the Attorney General of the United States, to initiate legal proceedings against individuals who damage National Marine Sanctuaries. The Act also provides that any sums collected are to be used "to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action." Similar

provisions were also included in oil spill legislation passed by the Senate earlier this Congress.

H.R. 2844 will extend similar protection now afforded National Marine Sanctuaries to marine or aquatic units of the National Park System, in addition to other liabilities currently available under Federal or State law.

LEGISLATIVE HISTORY

H.R. 2844 was introduced by Congressman Vento on June 29, 1989, and passed the House of Representatives by voice vote on July 19, 1989. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on February 21, 1990. Similar legislation, S. 1360, was introduced in the Senate by Senator Bumpers on July 20, 1989.

At the business meeting on May 23, 1990, the Senate Committee on Energy and Natural Resources ordered H.R. 2844, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on May 23, 1990, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 2844, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Conrad*	
Mr. Heflin*	
Mr. Rockefeller	
Mr. Akaka	
Mr. McClure*	
Mr. Hatfield*	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Garn*	
Mr. McConnell*	

* Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of H.R. 2844, the Committee adopted an amendment in the nature of a substitute. In addition to making several technical, clarifying or conforming corrections, the amendment makes several substantive changes.

H.R. 2844, as passed the House of Representatives, provides that any person who destroys, causes the loss of, or injures any marine or aquatic park resource is liable to the United States for response costs and damages. An instrumentality (including vehicles, vessels, aircraft and other equipment) that destroys, causes the loss of, or injures park system resources is liable in rem to the same extent that a person is liable. The Committee amendment maintains the same liability provisions. The Committee notes that nothing in the amendment enlarges or diminishes the authority of the National Park Service or any State to manage fish and game resources.

Although the liability provisions are identical, the Committee amendment modifies the definition of valid defenses. Both the House-passed bill and the Committee amendment provide that a person is not liable for damage to a park system resource caused solely by an act of God or an act of war, damage caused by an activity authorized by Federal or State law, or damage caused solely by a third party (other than an employee or agent of the person), provided the person acted with due care. The amendment deletes the other defenses in the House-passed bill—that the damage was of a de minimis nature, or that the damage was caused by an act or omission of a party (other than a common carrier) whose act or omission occurred in a contractual relationship with the person, and the person acted with due care.

The amendment clarifies the definition of park resources to include only those resources located within the exterior boundaries of a park unit which are Federally owned. This clarification is not intended to limit in any manner current Federal authorities which may exist with respect to the use of non-Federal resources within a park unit, such as requirements for permits or regulations promulgated pursuant to the Federal Government's navigational servitude. The amendment simply clarifies that the mere inclusion of property within the exterior boundaries of a park unit does not itself create a property interest in the United States.

The amendment also modifies the provision of the bill authorizing the Attorney General to commence civil actions against any person who may be liable for damage to park system resources. The amendment provides that after a finding by the Secretary of the Interior of damage to a park system resource, or that absent the undertaking of response costs (preventive actions by the Secretary), damage to a park system resource would have occurred, the Attorney General, upon the request of the Secretary, is authorized to commence a civil action in the appropriate United States district court. The Secretary of the Interior is required to submit a request to the Attorney General whenever a person may be liable or an instrumentality may be liable in rem as provided in section 2. The amendment deletes a provision requiring that the Secretary act as a trustee for park system resources. This provision is not necessary, as the Secretary is required to submit a request for action to the Attorney General whenever damage to a park system resource occurs. The Committee notes that the liability provisions set forth in the amendment are in addition to, and not in lieu of, other existing laws establishing liability for damage to resources within units of the National Park System.

The House-passed bill provides for funds recovered pursuant to this Act to be available to the Secretary to be used, without further Congressional action, for reimbursement for response costs and damage assessments, restoration and replacement of park system resources, and for the management and improvement of the affected park. The Committee amendment expands this section to include—in addition to funds recovered for damage to marine resources pursuant to this Act—funds recovered under any Federal, State or local law for damage to any resource within any unit of the National Park System, except for resources owned by a non-Federal entity.

The amendment also modifies the manner in which the funds may be spent. The amendment deletes the provision in the House-passed bill allowing recovered funds to be used for park management purposes. Instead, any funds remaining after response costs and damage assessments have been reimbursed and the damaged park resources have been replaced or restored are to be deposited into the general fund of the United States Treasury. The amendment makes clear that that Secretary may not use recovered funds to acquire any land or water, or interests therein or rights thereto, unless such acquisition is specifically approved in advance in Appropriations Act and the acquisition would be permitted under the park's enabling legislation.

The amendent also provides that the Secretary is to report annually to the appropriate Congressional authorizing and appropriation committees detailing funds recovered and spent pursuant to this Act.

Finally, the Committee amendment provides, as does the House-passed bill, that the Secretary is authorized to accept donations of money or services to meet expected, immediate, or ongoing response costs. The Secretary is authorized to expend or employ such donations at any time without further Congressional action.

SECTION-BY-SECTION ANALYSIS

Section 1 defines certain terms used in the Act. The term "park system resource" is defined to mean any living or non-living resource located within, or living as part of a marine or Great Lakes aquatic regimen, except for resources owned by a non-Federal entity. "Regimen" is defined to mean a water column and submerged lands, up to the high-tide or high-water line.

Section 2 sets forth the liability provisions of the bill.

Subsection (a) provides that any person who destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from the destruction, loss, or injury.

Subsection (b) states that any instrumentality (including, but not limited to vessels, vehicles, aircraft, or other equipment) that destroys, causes the loss of, or injures any park system resource is liable to the United States for response costs and damages resulting from the destruction, loss, or injury to the same extent a person is liable under subsection (a).

Subsection (c) sets forth allowable defenses. A person is not liable if the damage to the park system resource was caused solely by an

act of God or an act of war, or the person acted with due care and the damage was caused solely by an act or omission of a third party (other than an employee or agent of the person), or the damage was caused by an activity authorized by Federal or State law. The Committee notes that the final defense, that the activity causing the damage was authorized by Federal or State law, does not include within its scope activities where the Federal government merely grants an permit to operate, such as shipping. The Committee wishes to emphasize that the provisions of this Act are in addition to and not in lieu of other remedies available under Federal, State or local law, and is not intended to suggest that the Federal government does not already have authority to prevent actions which threaten Federal property or recover damages when injury actually occurs.

Section 3 authorizes the Attorney General of the United States to commence civil actions against persons who damage park system resources.

Subsection (a) provides that upon the request of the Secretary, and upon a finding by the Secretary of damage to a park system resource (or absent the undertaking of response costs, damage to the park system resource would have occurred), the Attorney General is authorized to commence a civil action against the person in the appropriate United States district court. The Secretary is required to submit a request whenever a person may be liable, or an instrumentality may be liable in rem, for costs and damages as provided in section 2.

Section (b) directs the Secretary to undertake all actions necessary to prevent or minimize the destruction, loss of, or injury to park system resources, or to minimize the imminent risk of such destruction, loss, or injury. The Secretary is also required to assess and monitor damages to park system resources.

Section 4 deals with the use of recovered funds, not only as a result of actions initiated pursuant to this Act for damage to marine or aquatic park system resources, but in addition, amounts recovered by the Federal government under any Federal, State, or local law or regulation as a result of damage to living or non-living resources located within any unit of the Nationl Park System. Damages to resources owned by non-Federal entities are excepted from the provisions of this section. The section provides that all funds recovered shall be available to the Secretary, and without further Congressional action, may be used only as provided in this section.

Subsection (a) provides that the Secretary may be reimbursed for response costs and damages undertaken by the Secretary or other Federal agencies as the Secretary deems appropriate.

Subsection (b) authorizes the Secretary to use recovered funds to restore, replace or acquire the equivalent of resources which were the subject of the action. No recovered funds may be used to acquire any lands or water, or interests therein or rights thereto, unless such acquisition is specifically approved in advance in Appropriation Acts. In addition, any acquisition of land or water shall be subject to any limitations contained in the organic legislation for the park unit.

Subsection (c) provides that any monies remaining after expenditures pursuant to subsections (a) and (b) are to be deposited into the General Fund of the United States Treasury.

Section (d) requires the Secretary to report annually to Congress on funds expended pursuant to this Act. The report is to contain a detailed analysis and accounting of funds recovered and expended, including but not limited to donations received pursuant to section 5, projects undertaken, and monies returned to the Treasury.

Section 5 authorizes the Secretary to accept donations of money or services to meet expected, immediate or ongoing response costs. Any donations may be expended or employed at any time without further Congressional action.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2844. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2844, as reported.

EXECUTIVE COMMUNICATIONS

On January 18, 1990, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 2844. These reports had not been received at the time the report on H.R. 2844 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the National Park Service at the Subcommittee hearing follows:

STATEMENT OF CONSTANCE B. HARRIMAN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman, I appreciate the opportunity to provide your Committee with the views of the Department of the Interior on this legislation.

We strongly support the enactment of either bill, if amended as suggested in this statement.

The bills differ only in their titles and in minor stylistic or typographical detail; they are identical in substance,

The bills would authorize the Attorney General to sue for response costs and damages to marine resources or aquatic resources within the National Park System. Amounts recovered in such actions would be available, without appropriation, to the Secretary of the Interior to finance response costs and damage assessments, to restore, replace, or acquire the equivalent of the damaged resources, and to manage and improve the unit of the National Park System where the damaged resources are located.

The bills further direct the Attorney General to seek equitable relief to abate an imminent risk of destruction or injury to such marine or aquatic resources or to restore or replace resources actually injured.

Finally, the bills would authorize the Secretary to accept donations of money or services to meet response costs, and to expend such money without further congressional action.

Mr. Chairman, there are 23 units of the National Park System that have marine resources within their boundaries. Six additional units, including Voyageurs National Park in Minnesota, are located on the Great Lakes and contain aquatic resources that would fit the definition of "Park System Resource" which would be protected under the bills.

The effect of the bills would be to extend to these 29 units of the National Park System the same relief for damage to marine resources as is now available in existing law for National Marine Sanctuaries designated by the Secretary of Commerce. The Marine Protection Research, and Sanctuaries Act of 1972 was amended in the last Congress (P.L. 100-627) to provide the same or similar liability and recovery provisions for Marine Sanctuaries as S. 1360 and H.R. 2844 would extend to the National Park System. We believe it is appropriate to treat damage to parks and marine sanctuaries the same, in terms of the ability of the resource manager to prevent damage add to use amounts recovered from the party found liable to repair or replace damaged resources.

The need for this legislation is highlighted by two fairly recent events: The first occurred in December 1986 when a freighter ran aground on a living coral reef in Biscayne National Park, Florida. The freighter damaged about 6,000 square feet of reef. The Department of Justice sued for damages, and the vessel's owner settled out of court in the amount of $40,000. This money, was deposited in the general fund of the Treasury and was unavailable to the National Park Service for repair of the damaged reef.

The second incident occurred October 30, 1989, also in Florida. In this case, a freighter loaded with phosphate fertilizer ran aground on a living coral reef within Fort Jefferson National Monument in the Dry Tortugas. Damage to the reef was extensive—about 3 acres were bulldozed by the freighter's hull. The Department of Justice filed suit on November 3, 1989, seeking several millions of dollars in

damages. The ship's corporate owner posted a bond of $3.1 million and the case is proceeding. The State of Florida has intervened on the basis that the damaged reef may be State property within the 3-mile limit. If the bond is forfeited, or if an award is granted, the money must be deposited in the general fund of the Treasury.

Mr. Chairman, living coral is fragile and must be repaired soon after damage occurs. Unfortunately, no funds were available for repairs to the reef at Biscayne in 1987 and the coral died. It is uncertain whether funds are available to repair the recent damage at Fort Jefferson. Under the provisions of the pending bills, however, fines or judgments paid by the party which caused the damage would be available for repairs.

Section 1(e) would provide 20 percent of the recovered amounts to finance response costs and damage assessments. The remaining amounts would be used in order of priority to (a) restore, replace or acquire park resources and (b) to manage and improve the park system unit. We are concerned with this distribution of funds. First, it is possible that damage assessment and response costs could exceed 20 percent of funds recovered; second, it would be inappropriate to make any part of the balance of funds available for day-to-day park operations, since such funding would be outside the normal appropriations process. Therefore, we recommend that funds recovered from liable parties be used to address any and all damage assessment, response and restoration costs or acquisition costs for replacement purposes associated with the injury to the marine resource. Any remaining amounts should be deposited in the General Fund of the Treasury, rather than to fund additional park improvements. These needs should be addressed through the regular appropriations process.

Also, Mr. Chairman S. 1360 and H.R. 2844 would appear to include oil spills which cause resource damage. As a technical matter, this legislation should be amended to assure that it does not cover claims or liabilities arising under section 311 of the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act.

Mr. Chairman, in designating units of the National Park System, the Congress recognizes their special qualities over and above other resources. These special places warrant special care. It is fitting, therefore, that S. 1360 and H.R. 2844 would extend the existing damage recovery process for marine sanctuaries to marine resources of the National Park System.

This concludes my prepared remarks, Mr. Chairman, I would be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 2844, as ordered reported.

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